

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Region 32**

**CYPRESS MANUFACTURING COMPANY, A  
WHOLLY OWNED SUBSIDIARY OF INDUS  
HOLDING COMPANY<sup>1</sup>**

**Employer**

**and**

**ESMERALDA OCHOA**

**Case 32-RD-247755**

**Petitioner**

**and**

**UNITED FOOD AND COMMERCIAL WORKERS  
UNION, LOCAL 5**

**Union**

**DECISION AND DIRECTION OF ELECTION**

A petition was filed on September 6, 2019, by Esmeralda Ochoa (Petitioner) seeking to decertify United Food and Commercial Workers Union, Local 5 (Union) as the exclusive collective bargaining representative of certain production and maintenance workers employed by Indus Holding Co. (Employer). After issuance of a Notice of Hearing, a hearing was held before a Hearing Officer of the National Labor Relations Board (Board) on October 8, 2020.<sup>2</sup> The only issue is whether there should be an in-person manual election held on site at the Employer's facility (facility) or whether a mail-ballot election should be conducted in light of the current COVID-19 pandemic. Inasmuch as the issue of how an election may be conducted is not a litigable one, the parties were not invited to file post-hearing briefs.

The Board has delegated its authority to me in this proceeding pursuant to Section 3(b) of the National Labor Relations Act (the Act). Accordingly, I have carefully considered the record and the parties' respective positions, as well as the current local circumstances surrounding the

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<sup>1</sup> I grant the parties' joint motion to amend the petition and the other formal documents to correctly reflect the names of the parties as set forth herein, to the extent that they do not already do so.

<sup>2</sup> All dates hereinafter are in 2020 unless indicated otherwise.

COVID-19 pandemic and, for the reasons set forth below, I shall direct that a mail ballot election be conducted.

### ***BACKGROUND***

On about April 13, 2018, the Union was certified as the collective-bargaining representative for certain employees of the Employer in the following Unit:

***Included:*** All full-time and regular part-time general labor employees, packaging employees, production employees, dishwashers, maintenance employees, inventory employees, lab extraction technicians and lab extraction apprentices employed by the Employer at its facility located at 20 Quail Run Circle, Salinas, California.

***Excluded:*** Consultants, company owners, management employees, truck drivers, salespersons, administrative employees, working foremen, temporary employees employed by a third-party contractor, confidential employees, office clerical employees, guards, and supervisors as defined in the Act.

The Unit consists of between 38 to 40 employees.<sup>3</sup> The parties stipulated that there is no collective bargaining agreement that might act as a bar to an election.

The Employer prefers a manual on-site election but indicated that in view of the Board's recent orders for mail-ballot elections in light of the COVID-19 pandemic, it would be agreeable to a mail-ballot election if so ordered. The Union has requested a manual election, noting that manual elections for state and county offices are currently taking place in Monterey County in environments less controlled than that of the Employer. Moreover, according to the Union, the infection rates in the County have continued to decrease over the past several months, further lowering the risk of conducting a manual election. The Petitioner did not express a preference on the method of the election.

### ***THE EMPLOYER'S OPERATION***

The Employer is engaged in the non-retail business of manufacturing, packaging, and distributing cannabis products at a single-story stand-alone manufacturing facility located in a business office complex in Salinas, California.<sup>4</sup> The facility consists of a packing area where concentrates and other products are packaged; a kitchen area where cannabis products are manufactured, including various edibles, chocolates, gummies, and the like; and a beverage production area, which is currently not in use and has not been for some months.

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<sup>3</sup> The Employer broke down the Unit into three custodians, eight extraction lab techs, one inventory specialist, eight packaging employees, and approximately eleven production assistants. The total does not include temporary employees.

<sup>4</sup> The Employer suggests that these workers are classified as essential workers: the record shows that they have been working at the facility since at least May.

Also within the facility is a Volatile Extraction Laboratory in six separate Class 1, Division 1 explosion-proof rooms, as well as an inventory control room for bulk product and oils arriving to the facility as well as already manufactured goods. The facility also has a breakroom immediate inside the entrance just past the reception desk and check-in area.

The facility shares a parking lot with other nearby business, and it has at least seven entrances/exits, not all of which are currently used. Most of the employees, guests, and visitors use the secured main entrance. Most deliveries are received through a roll-up gate in the kitchen production area, although product occasionally can be moved in and out of several doors on the eastside of the building by the extraction workers. There are several doors on the northside of the building as well where product occasionally can be moved in and out.<sup>5</sup> There is also a locked secured door on the westside of the facility used for cash transactions.

The number of employees present in the facility at any given time may vary from a few working in the extraction lab at night to a full complement of up to 40 production employees, not including managers and security guards. The majority of the unit employees work in the packing or kitchen area, with fewer in extraction. The Employer may occasionally run two shifts – daytime and swing shift – five days a week and sometimes on weekends depending on demand.

Per State law, employees, visitors, and guests are monitored at the entrance to the facility, and all are currently required to wear face coverings while in the facility. State law regulates who may visit the facility, and, since the start of the pandemic, the Employer has eliminated most public visitor access such as general interest tours or potential investors. As an additional precaution, the Employer has also eliminated interns. Law enforcement and fire personnel are regularly granted access to the facility, as well as construction and maintenance workers. The Employer requires all visitors to produce valid government I.D. and keeps a log of all visitors to the facility.

All employees at the facility are required to wear PPE provided by the Employer (specifically masks and gloves), in addition to the other hygiene requirements for manufacturing plants, which includes smocks or scrubs and hairnets.<sup>6</sup> The specific protective outer clothing can vary by unit. Hand sanitizer is available throughout the facility. The employees in the packing area work at tables demarcated to allow the requisite 6-foot social distancing. Other unspecified work areas have been reconfigured by spreading workstations out so employees can observe social distancing while working and during breaks, with the exception of occasional transient contact. Social distancing markings are not delineated, since employees don't work in a line. Rather, employees are expected to voluntarily observe and self-enforce social distancing.

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<sup>5</sup> As a security measure, delivery persons are not allowed in the facility.

<sup>6</sup> The Employer confirmed that some employees provide their own personal masks. The employees in the extraction room have always worn N-95 masks due to the hazardous nature of their work. Also, employees are not required to wear gloves as a COVID-19 precaution, but some regularly wear them in the course of their duties.

Early in the pandemic, one employee tested positive for COVID-19 and the facility was closed for three days and deep-cleaned and sanitized before reopening.<sup>7</sup> The Employer was able to identify other employees who may have had contact with the infected individual and quarantined them for an unspecified period. Shortly thereafter, the Employer posted pandemic safety protocols electronically and physically at the entrance to the facility. Since that time, there has been either one additional positive COVID-19 test of an employee whose office is not in this facility but who regularly works there: two other employees were quarantined as a result. The Employer has no information about how many of its employees have been tested to date, since it does not sponsor testing.

The Employer has been working on its HVAC and ventilation system recently for reasons not related to the COVID-19 pandemic.

At the check-in point inside the main entrance to the building described above, all individuals entering the facility must pass by a wall-mounted thermometer to confirm their temperature. Any employee with an elevated temperature is sent home and asked to quarantine in place. The record does not reveal how many times this has occurred, if ever.

Employees are required to self-report symptoms to the Employer, but the nature of the work does not allow the Employer to track employees through the plant. In the case of the two employees who tested positive for COVID-19, the Employer was able to conduct contact tracing using the State-mandated video surveillance system by reviewing the approximately 80 cameras that cover virtually the entirety of the facility.

### ***PROPOSED MANUAL ELECTION LOGISTICS***

With regard to the breakroom where the Employer suggested a manual on-site election could be held, the Board agent could enter the room from the main entrance after passing through the checkpoint. There are three gender-neutral restrooms in the facility: two in the production hallway and another in the extraction area – all of them within 20 steps of the breakroom.

The breakroom measures approximately 12 by 24 feet, and has equipment common to breakrooms, including a sink, refrigerator, shelving, vending machines and basic supplies. Seating is bench style along one wall, with some table seating. Occupancy in the breakroom has been reduced as a response to the pandemic, and another break area was created in the production area to handle overflow. The Employer confirmed that because of the installed seating and shelving and the appliances and vending machines that cannot be moved, the actual floor space is significantly less than the dimensions would suggest.

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<sup>7</sup> This deep cleaning conducted in May or June consisted of sanitizing racks, table, chairs, and other surfaces, and deep cleaning the carpet which was subsequently replaced in favor of more sanitary epoxy floor covering.

The Employer conceded that the breakroom would be “cramped” for a Board agent, three election observers, a ballot box, and an election booth and that there would not be a lot of room for individuals to move off of their “X” spot (presumably the 6-foot social distancing marker on the floor).<sup>8</sup>

With regard to other areas inside the facility that might be used to conduct a manual election, the Employer confirmed that there was a former conference room that is currently being used for storage. There is also the former beverage room, which the Employer indicated was “larger” than the breakroom or the old conference room, and had two entrances from the outside which could be used for voter ingress and egress, and which could also be left open for additional ventilation. There is apparently some equipment, including large stainless-steel tanks and other equipment used for beverage production, that would have to be moved and/or reconfigured to create sufficient floor space for an election. The Employer stated that it was willing to do this if necessary.

The Union has suggested that a manual on-site election be held outside the facility in the adjacent parking lot. The Employer confirmed that one of its dedicated parking spaces could be covered by a canopy, but opined that the main parking lot by the entrance would not be “ideal,” and perhaps a parking area on the north or westside at the rear of the building where vendors park might be better because there is less traffic. The Employer occasionally holds picnics on the northside of the building, which runs the length of about 15-18 parking spaces. In addition, there is an additional adjacent roadway where cars pass that could afford another 15 feet of space away from the building. The Employer confirmed that a canopy could also be erected in this area but warned that the weather could be cold and/or foggy. As noted above, the employees could access this area from the several doors on the northside of the building, and the Board agent and the observers would be able to access the restrooms through those doors as well.

Regardless of where a manual election is held, the Employer will provide all voting employees with disposable gloves and masks. The Employer would also mark the floor or the ground with appropriate social-distancing markers. Although the Employer did not provide photos or floorplans of either of the proposed polling places prior to or at the hearing, it offered to provide them to the Board agent and the Union before the election to allow for review of the setup.

The Employer did not specifically reference General Counsel Memorandum 20-10 *Suggested Manual Election Protocols* (GC 20-10) or affirm that it would abide by the suggested protocols contained therein. Rather, it stated that it could do “whatever the Board feels is necessary and appropriate for a safe election,” and to work with the Union’s representatives beforehand to come up with “an acceptable solution” for conducting a manual election.

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<sup>8</sup> In fact, the Hearing Officer, who conducted the original election in that breakroom, confirmed that it was cramped even under pre-COVID conditions.

The parties agreed that if a manual election was ordered, there should be one polling session, preferably on a Wednesday, beginning about 2:00 p.m. to allow for both the day and swing shift employees and lasting between two and three hours to allow for proper spacing of voters.

### ***A MAIL-BALLOT ELECTION IS APPROPRIATE***

COVID-19 remains an ongoing national public health emergency that has resulted in nearly 10 million cases and more than 240,000 deaths nationwide.<sup>9</sup> The federal Centers for Disease Control (CDC) issued general guidelines for reducing the spread of the virus, including, *inter alia*, guidelines for conducting elections encouraging officials to “consider offering alternatives to in-person voting if allowed,” noting that “[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19.”<sup>10</sup>

The impact of COVID-19 has been particularly acute on California, which currently has one of the highest number of cases in the United States at 971,851, with nearly 18,000 resulting deaths.<sup>11</sup> On March 19, the State Public Health Officer and Director of the California Department of Public Health (CDPH) issued an order requiring most Californians to stay at home to disrupt the spread of COVID-19 among the population. On June 18, CDPH issued further guidance that broadly required the use of face coverings for both members of the public and workers in all public and workplace settings where there is a high risk of exposure.<sup>12</sup>

Despite these measures, however, the number of cases in the State began to increase after businesses began to partially reopen. As a result, the CDPH was forced to recognize that community spread of the virus in California remained a significant concern, especially in congregate settings. Consequently, on August 28, as part of its *Blueprint for a Safer Economy*, the CDPH initiated a new plan for reducing COVID-19 in the state with revised criteria for loosening and/or tightening restrictions on activities.

Under this plan, entitled the *Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe* (the Plan), every county in California is assigned to a tier based on its test positivity and adjusted case rate.<sup>13</sup> At a minimum, counties must remain in a given tier for at least 3 weeks before moving forward, and data is reviewed weekly. The four color-coded tiers based on the foregoing criteria are described (in descending order) as Purple (Widespread), Red (Substantial), Orange (Moderate), and Yellow (Minimal).

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<sup>9</sup> See COVID data tracker at [www.covid.cdc.gov](https://www.covid.cdc.gov) (last accessed November 9, 2020).

<sup>10</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

<sup>11</sup> See COVID data tracker at [www.covid.cdc.gov](https://www.covid.cdc.gov) (last accessed November 9, 2020).

<sup>12</sup> [https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings\\_06-18-2020.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf)

<sup>13</sup> <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>

Monterey County, where the Employer’s facility is located, is currently in the highest tier at “Widespread,” meaning that many non-essential business operations are closed, and public gatherings are limited.<sup>14</sup> The County currently reports 12,122 cases of COVID-19 as of November 9 – an increase of .8% over the previous day – with 101 reported deaths.<sup>15</sup> The current positivity rate average over the past 14 days in the County is 5.9%,<sup>16</sup> and the 14-day trend in the number of new confirmed cases in the County is increasing.<sup>17</sup>

Region 32 is not operating under mandatory telework status.

## ***ANALYSIS***

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to ensure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329 U.S. 324, 330 (1946). This discretion includes the ability to direct a mail-ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board’s longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2.<sup>18</sup> However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are “scattered” over a wide geographic area, “scattered” in time due to employee schedules, in strike situations, or other unspecified extraordinary circumstances. *San Diego Gas*, *supra* at 1145.

The Board has recently, in cases involving COVID-19 considerations, expanded on the “extraordinary circumstances” referenced in *San Diego Gas*, *supra*, that would justify a mail-

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<sup>14</sup> For example, guidance provided by the Monterey County Health Department limits social circles in Monterey County to groups involving up to 12 people. <https://www.co.monterey.ca.us/government/departments-a-h/administrative-office/office-of-emergency-services/response/covid-19>.

<sup>15</sup> <https://covid19.ca.gov> > State Dashboard; <https://coronavirus.jhu.edu/us-map> (both last accessed November 9, 2020)

<sup>16</sup> <https://covid19.ca.gov/state-dashboard/>

<sup>17</sup> <https://coronavirus.jhu.edu/us-map>

<sup>18</sup> I note that the provisions of the *Casehandling Manual* are not binding procedural rules: it is issued by the General Counsel and not the Board and is intended to provide guidance to regional personnel in the handling of representations cases. See *Patient Care*, 360 NLRB 637, 638 (2014), citing *Solvent Services*, 313 NLRB 645, 646 (1994).

ballot election and held that the totality of the circumstances surrounding the COVID-19 including federal, state, and local government directives limiting travel and how business can be conducted, constituted a valid basis for directing a mail-ballot elections.<sup>19</sup>

Furthermore, GC 20-10, in setting forth detailed suggested manual election protocols, reiterated that Regional Directors have the authority, delegated to them by the Board, to make “initial decisions about when, how, and in what manner all elections are conducted. The General Counsel further noted Regional Directors have made and will continue to

make these decisions on a case-by-case basis, considering numerous variables, including, but not limited to, the safety of Board Agents and participants when conducting the election, the size of the proposed bargaining unit, the location of the election, the staff required to operate the election, and the status of pandemic outbreak in the election locality.

More recently, the Board set forth the considerations that Regional Directors should weigh in determining whether an election should be conducted by mail-ballot, as opposed to an in-person manual-election, because of COVID-19-related considerations. Specifically, in *Aspirus Keweenaw*, 370 NLRB No. 45 (Nov. 9, 2020), the Board reaffirmed its long-standing policy favoring manual elections and outlined six situations that suggest the propriety of mail ballots due to the COVID-19 pandemic. When one or more of the following situations is present, a Regional Director should consider directing a mail-ballot election:

1. The Agency office tasked with conducting the election is operating under “mandatory telework” status;
2. Either the 14-day trend in number of new confirmed cases of COVID-19 in the county where the facility is located is increasing, or the 14-day testing positivity rate in the county where the facility is located is 5 percent or higher;
3. The proposed manual election site cannot be established in a way that avoids violating mandatory state or local health orders relating to maximum gathering size;
4. The Employer fails or refuses to commit to abide by GC Memo 20-10, Suggested Manual Election Protocols;
5. There is a current COVID-19 outbreak at the facility or the employer refuses to disclose and certify its current status; or
6. Other similarly compelling circumstances.

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<sup>19</sup> See, e.g. *Atlas Pacific engineering Company*, Case 27-RC-258742 (May 8, 2020).



The Board ordered this new guidance would be applied retroactively to all pending cases.

After careful examination of the record, the parties' respective positions, and the current state of the COVID-19 virus in California and Monterey County, I have determined that a mail-ballot election is the appropriate option.

In reaching this decision, I have applied the six situations set forth in *Aspirus Keweenaw, supra*, to the facts of this case and have concluded that the scenario described in factor #2 is present in the county where the facility is located. Specifically, the data shows that the 14-day trend in number of reported cases in Monterey County has increased over the past 14 days, and the 14-day testing positivity rate is 5% or higher.

Moreover, the situation described in factor #4 in *Aspirus Keweenaw, supra*, is also present in that the Employer, who has requested the manual election, has not unequivocally committed to abide by all of GC 20-10's suggested election protocols. Rather, it has merely stated that it would do whatever the Board feels is necessary and appropriate.<sup>20</sup> The Employer did not refer to GC 20-10 during the hearing, or provide specific details in its initial submission to the Region regarding its compliance with GC 20-10.<sup>21</sup> Moreover, the Employer's offer to work with the Union's representatives beforehand to come up with "an acceptable solution" for conducting a manual election does not cure this failure, as the Board in *Aspirus Keweenaw* admonished that Regional Directors should be careful not to approve manual election agreements, whether or not related to the GC 20-10 protocols, that would create the impression that any party, rather than the Board, has control over the election process.<sup>22</sup>

Finally, *Aspirus Keweenaw, supra*, at factor #6 allows me to also consider "other similarly compelling circumstances" in determining whether an election should be conducted by mail-ballot due to the COVID-19 pandemic. In this regard, I note that the locations suggested by the Employer that could be used to conduct an in-person manual election do not appear to be suitable and could not comport with the protocols set forth in GC 20-10. All parties agreed that the breakroom initially suggested by the Employer would be too small to allow for proper social distancing, and that the alternative suggestion of the northside parking lot is impracticable due to the weather at this time of year. Finally, insufficient details were provided regarding the former beverage room, and whether it could be cleared of the equipment presently stored there and reconfigured to accommodate a manual election with proper social distancing. As set forth in

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<sup>20</sup> See, for example, *Sea World of Florida, LLC*, Case 12-RC-257917 (Sept.22, 2020), where the Board denied the employer's request for review of the Regional Director's Order of a mail-ballot election because it did not assert that it would comply with GC 20-10, but merely stated that it would implement every "practicable" consideration in the Memo and would work with the Region and the petitioner to resolve any remaining concerns. *Aspirus Keweenaw, supra*, slip op. at p.7, fn.32.

<sup>21</sup> While the Board currently recommends that the Regional Director should offer an employer the opportunity to cure any defects with regard to compliance with GC 20-10, and not "reject proposals on mere technicalities or inadvertent non-compliance," I note that the Employer herein was represented by counsel before and during the hearing, which makes inadvertent non-compliance unlikely. See *Aspirus Keweenaw, supra*, slip op. at p.7.

<sup>22</sup> *Id.*

greater detail above, all three locations are lacking in sufficient detail with regard to set-up, ingress and egress, where employees would line up, etc., to allow me to determine whether any of them would be suitable. This is another factor that militates in favor of a mail-ballot election.

## **CONCLUSIONS**

I have considered the evidence and the arguments of the parties, and I conclude that it is appropriate to hold a mail-ballot election among the employees in the petitioned-for unit. As noted above, I have the authority under Section 3(b) of the Act to decide this matter on behalf of the National Labor Relations Board and accordingly, based upon the entire record, I find:

1. The parties stipulated, and I so find that the Employer is engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>23</sup>
2. The parties stipulated, and I so find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 2(6) and (7) of the Act.
4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

***Included:*** All full-time and regular part-time general labor employees, packaging employees, production employees, dishwashers, maintenance employees, inventory employees, lab extraction technicians and lab extraction apprentices employed by the Employer at its facility located at 20 Quail Run Circle, Salinas, California.

***Excluded:*** Consultants, company owners, management employees, truck drivers, salespersons, administrative employees, working foremen, temporary employees employed by a third-party contractor, confidential employees, office clerical employees, guards, and supervisors as defined in the Act.

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<sup>23</sup> The parties stipulated, and I so find, that the Employer is a California corporation, with an office and place of business in Salinas, California, where it is engaged in the non-retail business of manufacturing, packaging, and distributing cannabis products. During the last twelve months, the Employer purchased and received goods valued in excess of \$50,000 from enterprises who received the goods directly from points outside the State of California.

## ***DIRECTION OF ELECTION***

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 5**.

### **A. Election Details**

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at **5:00 p.m. on November 24, 2020**. Ballots will be mailed to voters by the National Labor Relations Board, Region 32. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **December 1, 2020**, as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Region 32 office at (510) 637-3300 or Nicholas L. Tsiliacos at (510) 671-3046.

The ballots will be commingled and counted by the Region 32 office at **10:00 a.m. on December 16, 2020**. In order to be valid and counted, the returned ballots must be received by the Region 32 office prior to the counting of the ballots.

The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

### **B. Voting Eligibility**

Eligible to vote are those employees in the unit who were employed during the **payroll period ending October 30, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. The parties stipulated that also eligible to vote in the election are employees in the unit described above who have worked an average of 4 hours or more per week during the 13 weeks immediately preceding the eligibility date for the election.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote by mail as described above.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **November 13, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

#### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the elections on the grounds that it did not file a request for review of this Decision prior to the elections.

The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations. Unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden, a request for review must be E-Filed through the Agency's website. A request for review may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

The request for review will be limited to the subjects of the method, date, time, and place of the election ordered.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated: November 10, 2020.

/s/ Valerie Hardy-Mahoney

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